

MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:30 PM, TUESDAY, AUGUST 18, 2020
MTG ROOM B, CLAY COUNTY COURTHOUSE

Members Present: Bill Davis, Ezra Baer, Greg Anderson, Perry Bushaw

Members Absent: Paul Krabbenhoft

Others Present: Matt Jacobson, Katie Stock, Rita Rueckert, Patty Bestler, Leon Schlaffmann, Jean Ward of Spring Prairie Township

The meeting was called to order at 5:30 PM by Chair William Davis. Roll call was taken for this meeting that was held virtually. Director Matt Jacobson went over the rules for participating in a virtual platform meeting.

On motion by Greg Anderson, seconded by Ezra Baer, and unanimously carried, the Board approved the meeting Agenda.

On motion by Greg Anderson, seconded by Perry Bushaw, and unanimously carried, the Board approved the Minutes from July 21, 2020.

PUBLIC HEARING(S):

AGGREGATE INDUSTRIES – REQUEST FOR VARIANCE

The applicant is seeking approval of a variance to the property line setback for aggregate mining of the Clay County Development Code in part of the N1/2 SE1/4 and E1/2 NE1/4 of Section 13, Township 140N, Range 046W, parcel 27.013.4500, Spring Prairie Township.

On motion by Greg Anderson, seconded by Ezra Baer, and unanimously carried, the Board opened the public hearing.

Matt Jacobson, Planning & Zoning Director, states Applicant is requesting to mine within 100 feet of a property line setback. Aggregate is currently leasing 37 acres of the Spring Prairie Hutterian Brethren Inc. property, which is to the east of the property owned and currently mined by Aggregate. The property line in question is the north/south property line on the west side of the Spring Prairie Hutterian Brethren property/east side of the Aggregate-owned property. There has been a letter received from Cornelius Wipf of Spring Prairie Hutterian Brethren advising of their approval of this requested Variance. There have no other public comments regarding this Variance request. Director Jacobson sees no problems with the Variance request as it has been presented. The Applicant has a hearing later this date to request an Interim Use Permit for the mining on the Spring Prairie Hutterian Brethren parcel. The Variance being requested would only be applicable to the Spring Prairie Hutterian Brethren parcel.

Patty Bestler is the Land Environment Manager for Aggregate Industries. She confirmed that the hearing was solely for the west property line of the mine site. She stated that Aggregate Industries is aware of the 500-foot setback regarding the Schlaffmann residence to the north of the property, and confirms that this request is just for the west property line of this parcel. Bill

Davis asked if the Applicant's intent was to mine to their existing property line. Patty Bestler states that there was a Variance granted in 2009 to allow them to mine up to their east property line. Also, per her discussion with Director Jacobson, she advises that they feel it is best to use the existing haul road instead of creating a new one. This existing haul road and exit point will eliminate truck traffic from passing by the Schlaffmann property as it will be further east from the Schlaffmann property.

Leon Schlaffmann owns property just to the north on 70th Avenue. He states that he has no objection to this Variance request for the 100-feet from the property line. He states that the Applicant has been good to work with in regard to their operation and does not anticipate any problems to arise in the future.

On motion by Greg Anderson, seconded by Ezra Baer, and unanimously carried, the public hearing was closed.

The Findings of Fact and Order were addressed by the Board of Adjustment as they pertain to the requested permit. All of the items can be addressed without conditions and none of them warranted further discussion.

On motion by Greg Anderson, seconded by Ezra Baer, and unanimously carried, the Board of Adjustment *GRANTED* the Variance to allow mining up to the west property line of this parcel adjacent to the Aggregate Industries property line of parcel 27.013.1600.

UNFINISHED BUSINESS:

There was no unfinished business.

NEW BUSINESS:

CONFLICT OF INTEREST: Clay County Attorney Katie Stock:

Katie Stock presented MN Statute 394.27 and case law pertaining to conflicts of interest for Board of Adjustment members. The statute does not truly state what a conflict of interest is, but does state if there is a conflict then that person should not vote. Simply knowing an applicant or being their neighbors does not prevent you from voting because of a conflict of interest; but if you have an ability to financially gain or lose because of a vote, then you should recuse yourself from voting. She shared information regarding the Lenz case which gives 5 points of information to determine if there is a conflict. She also went over case law from E.T.O., Inc d/b/a/ "Fergie's Bar" v. Town of Marion et al (375 N.W.2d 815 Minn 1985). The matter of "practical difficulty" was discussed and how the burden of proof is on the Applicant. Director Jacobson shared that Board of Adjustment members should not be the ones identifying the practical difficulty for the Applicant or preparing documentation for the Applicant to submit in support of their case.

Director Jacobson confirmed that sometimes he has asked members to visit properties with pending hearings to get a good understanding of what their situation is and what they are requesting. He also offered to visit any potential hearing properties with any of the Board members if they are interested.

There were questions as to what constitutes a violation of an open meeting law. There must be a quorum of the Board to be considered a violation of the open meeting law. It was recommended that if you feel you have a conflict of interest, you should bring the matter to Matt Jacobson or Katie Stock to determine how to proceed. If during a hearing you suspect you may have a conflict of interest, you should bring it up

immediately; however, if able to advise of a conflict in advance, members were encouraged to do so before the day of the meeting.

Katie Stock does not feel that it is necessary to amend the bylaws at this time. Her recommendation is to follow existing case law which would be the ultimate governing guidance.

On motion by Ezra Baer, and seconded by Perry Bushaw, the meeting was adjourned at 6:20 PM.

William Davis, Chair
Clay County Board of Adjustment